

House File 271 - Introduced

HOUSE FILE 271

BY WHEELER

A BILL FOR

1 An Act creating a capital murder offense by establishing
2 the penalty of death for murder in the first degree, and
3 including effective date and applicability provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 13.2, subsection 1, Code 2021, is amended
2 by adding the following new paragraph:

3 NEW PARAGRAPH. *0c.* Prosecute and defend all actions and
4 proceedings involving capital murder as defined in section
5 902.15, when in the attorney general's judgment, the interest
6 of the state requires the attorney general to intervene on
7 behalf of the county attorney, or upon request by the county
8 attorney.

9 Sec. 2. Section 13B.4, Code 2021, is amended by adding the
10 following new subsection:

11 NEW SUBSECTION. 6A. The state public defender shall perform
12 all of the following duties with respect to the appointment of
13 counsel for indigent persons in cases in which a sentence of
14 death may be or is to be imposed:

15 *a.* Provide or contract with attorneys for appointment as
16 lead counsel and cocounsel to provide legal services in cases
17 where a person is charged with capital murder under section
18 902.15, and the state has given notice of intent to seek the
19 death penalty or in cases in which a sentence of death is to be
20 imposed.

21 *b.* Conduct or sponsor specialized training programs for
22 attorneys representing persons who may be executed.

23 Sec. 3. NEW SECTION. 602.10112 **Qualifications of counsel**
24 **in capital murder cases.**

25 The supreme court shall prescribe rules which establish
26 minimum standards and procedures by which attorneys may become
27 qualified to provide legal services as lead counsel in cases in
28 which a sentence of death may be or is to be imposed.

29 Sec. 4. Section 707.2, subsection 1, paragraph d, Code 2021,
30 is amended to read as follows:

31 *d.* The person intentionally kills a ~~peace officer,~~
32 correctional officer, public employee, or hostage while the
33 person is imprisoned in a correctional institution under the
34 jurisdiction of the Iowa department of corrections, or in a
35 city or county jail.

1 Sec. 5. Section 707.2, subsection 1, Code 2021, is amended
2 by adding the following new paragraph:

3 NEW PARAGRAPH. *g.* The person intentionally kills a
4 peace officer, who is on duty, under any circumstances, with
5 knowledge that the person killed is a peace officer.

6 Sec. 6. NEW SECTION. **812A.1 Procedure to determine sanity**
7 **of condemned inmate.**

8 1. At any time prior to execution of an inmate under section
9 902.1A, if the director of the department of corrections or
10 the counsel for a person who is under a sentence of execution
11 has cause to believe that the inmate is suffering from such
12 a diseased or deranged condition of the mind as to prevent
13 the defendant from knowing the nature and quality of the act
14 the defendant has been convicted of, or from understanding
15 that trial on the offense has taken place and that execution
16 proceedings are about to take place, or to otherwise cause the
17 defendant to lack the capacity to understand the sentence which
18 has been imposed and to participate in any legal proceedings
19 relating to the sentence, the director or counsel may file a
20 request with the court that issued the warrant for execution
21 for a determination of the inmate's sanity. If the court
22 determines that there is not sufficient reason to believe
23 that the inmate is insane, the court shall enter an order
24 denying the request and shall state the grounds for denying the
25 request. If the court believes that there is sufficient reason
26 to believe that the inmate is insane, the court shall suspend
27 the execution and conduct a hearing to determine the sanity of
28 the inmate.

29 2. At the hearing, the court shall determine the issue of
30 the inmate's sanity. Prior to the hearing, the court shall
31 appoint two licensed physicians or licensed psychologists, or
32 one licensed physician and one licensed psychologist, who are
33 qualified by training and practice, for purposes of conducting
34 a psychiatric or psychological examination of the inmate. The
35 physicians or psychologists shall examine the inmate and report

1 any findings in writing to the court within ten days after
 2 the order of examination is issued. The inmate shall have
 3 the right to present evidence and cross-examine any witnesses
 4 at the hearing. Any statement made by the inmate during the
 5 course of any examination provided for in this section, whether
 6 or not the inmate consents to the examination, shall not be
 7 admitted into evidence against the inmate in any criminal
 8 proceeding for purposes other than a determination of the
 9 inmate's sanity.

10 3. If, at the conclusion of a hearing held pursuant to
 11 this section, the court determines that the inmate is sane,
 12 the court shall enter an order setting a date for the inmate's
 13 execution, which shall be carried into effect in the same
 14 manner as provided in the original sentence. A copy of the
 15 order shall be sent to the director of the department of
 16 corrections and the governor.

17 4. If, at the conclusion of a hearing held pursuant to this
 18 section, the court determines that the inmate is insane, the
 19 court shall suspend the execution until further order. At any
 20 time after issuance of the order, if the court has sufficient
 21 reason to believe that the inmate has become sane, the court
 22 shall again determine the sanity of the inmate as provided
 23 by this section. Proceedings pursuant to this section may
 24 continue to be held at such times as the court orders until
 25 it is either determined that the inmate is sane or incurably
 26 insane.

27 Sec. 7. NEW SECTION. 814.30 Review of capital murder death
 28 sentence.

29 1. In a case in which a sentence of death is imposed, the
 30 supreme court shall automatically review the judgment and
 31 sentence. The court's review of the case shall be de novo. The
 32 case shall not be transferred to the court of appeals.

33 2. A review by the supreme court of a judgment and sentence
 34 imposing the punishment of death has priority over all other
 35 criminal and other actions pending before the supreme court.

1 3. The supreme court shall review the trial and judgment,
2 and shall separately review the sentencing proceeding. Upon
3 determining that errors did not occur at the trial requiring
4 reversal or modification of the judgment, the supreme court
5 shall proceed to determine if the sentence of death is lawfully
6 imposed. In its review of the sentencing proceeding the
7 supreme court shall determine all of the following:

8 a. Whether the sentence of death was imposed capriciously or
9 under the influence of prejudice or other arbitrary factor.

10 b. Whether the special verdicts returned under section
11 901E.1 are supported by the evidence.

12 c. Whether the sentence of death is excessive or
13 disproportionate to the penalty imposed in similar cases,
14 considering both the crime and the defendant.

15 4. If the supreme court determines that the sentence of
16 death was not lawfully imposed, the supreme court shall set
17 aside the sentence and shall remand the case to the trial
18 court for a second sentencing proceeding to determine if the
19 imposition of death is warranted.

20 5. If the supreme court affirms the judgment and sentence
21 of death, the clerk of the supreme court shall certify the
22 judgment of the supreme court under the seal of the supreme
23 court to the clerk of the trial court.

24 Sec. 8. Section 815.10, Code 2021, is amended by adding the
25 following new subsection:

26 NEW SUBSECTION. 1A. If two attorneys have not already been
27 appointed pursuant to section 13B.4 or 13B.9, the court shall
28 appoint, for each indigent person who is charged with capital
29 murder under section 902.15, and in which a notice of intent
30 to seek the death penalty has been filed, two attorneys who
31 are qualified under section 602.10112 to represent the person
32 in the proceedings and in all state legal proceedings which
33 take place from the time the person is indicted or arraigned
34 until the person is sentenced on the charge. In addition, if
35 at any point in federal postconviction proceedings an indigent

1 person is not afforded court-appointed counsel, the state shall
 2 provide counsel to the person to present any claims determined
 3 meritorious by the federal court if the person is not otherwise
 4 represented by legal counsel. Only private attorneys and
 5 public defenders who are qualified to provide representation in
 6 cases in which the death penalty may be imposed are eligible
 7 for appointment or assignment to a case in which the death
 8 penalty may be imposed.

9 Sec. 9. NEW SECTION. 901E.1 Capital murder proceedings —
 10 request for death penalty — penalty proceedings.

11 1. As used in this section:

12 *a. "Intellectually disabled"* means the same as defined in
 13 section 902.15.

14 *b. "Mentally ill" or "mental illness"* means the same as
 15 defined in section 902.15.

16 2. If a notice of intent to seek the death penalty has
 17 been filed, objections to the imposition of the death penalty
 18 based upon allegations that a defendant was intellectually
 19 disabled or mentally ill at the time of the commission of
 20 the offense shall be raised within the time provided for the
 21 filing of pretrial motions under rule of criminal procedure
 22 2.11, Iowa court rules. The court may, for good cause shown,
 23 allow late filing of the motion. Hearing on the motion shall
 24 be held prior to trial and the burden of proof shall be on the
 25 defendant to prove intellectual disability or mental illness
 26 by a preponderance of the evidence. If the court finds that
 27 the defendant is intellectually disabled, the defendant, if
 28 convicted of capital murder under section 902.15, shall not be
 29 sentenced to death but shall be sentenced to life imprisonment
 30 in the manner provided in section 902.1. A finding by the
 31 court that the evidence presented by the defendant at the
 32 hearing does not preclude the imposition of the death penalty
 33 under this section and section 902.15 shall not preclude the
 34 introduction of evidence of intellectual disability or mental
 35 illness during the penalty proceeding. If the court finds

1 that evidence of intellectual disability or mental illness
2 does not preclude imposition of the death penalty, evidence of
3 intellectual disability or mental illness may be reviewed by
4 the jury in the penalty proceeding and the jury shall not be
5 informed of the finding in the initial proceeding at any time
6 during the penalty proceeding.

7 3. If at the trial on a charge of capital murder under
8 section 902.15, the state intends to request that the death
9 penalty be imposed under section 902.1A, the prosecutor shall
10 file a notice of intent to seek the death penalty, at the time
11 of and as part of the information or indictment filed in the
12 case.

13 4. If a notice of intent to seek the death penalty has been
14 filed, the trial shall be conducted in bifurcated proceedings
15 before the same trier of fact. During the initial proceeding,
16 the jury, or the court if the defendant waives the right to a
17 jury trial, shall decide only whether the defendant is guilty
18 or not guilty of capital murder under section 902.15.

19 a. If, in the initial proceeding, the court or jury finds
20 the defendant guilty of, or the defendant pleads guilty to,
21 an offense other than capital murder under section 902.15,
22 the court shall sentence the defendant in accordance with the
23 sentencing procedures set forth in rule of criminal procedure
24 2.23, Iowa court rules, and chapters 901 through 909, which are
25 applicable to the offense.

26 b. If the court or jury finds the defendant guilty of, or
27 the defendant pleads guilty to, capital murder under section
28 902.15, but the prosecuting attorney waives the death penalty,
29 the court shall sentence the defendant to life imprisonment in
30 accordance with the sentencing procedures set forth in rule of
31 criminal procedure 2.23, Iowa court rules, and chapters 901
32 through 909, which are otherwise applicable to convictions of
33 murder in the first degree.

34 c. If the court or jury finds the defendant guilty of
35 capital murder under section 902.15, or a defendant enters a

1 plea of guilty in the initial proceeding, and the prosecuting
2 attorney does not waive imposition of the death penalty, a
3 penalty proceeding shall be held in the manner provided in
4 subsections 5 through 13.

5 5. No sooner than twenty-four hours after a verdict of
6 guilty or a plea of guilty to capital murder under section
7 902.15 is returned in the initial proceeding, a penalty
8 proceeding shall be held to determine whether the defendant
9 shall be sentenced to death or to life imprisonment. The
10 proceeding shall be conducted in the trial court before the
11 trial jury, or before the court if the defendant has waived
12 the right to a jury trial or has waived the right for the
13 proceeding to be before the trial jury. Both the state and the
14 defendant shall have the right to present opening statements
15 at the commencement of the proceeding. In the proceeding,
16 evidence relevant to the existence of any aggravating or
17 mitigating circumstances may be presented as follows:

18 *a.* The state or the defendant may present evidence relevant
19 to the conviction of capital murder under section 902.15 and
20 any aggravating circumstances other than juvenile delinquency
21 adjudications for offenses which carry penalties equivalent to
22 the penalties imposed for simple or serious misdemeanors. The
23 state may introduce evidence of the actual harm caused by the
24 commission of the capital murder offense under section 902.15,
25 including but not limited to evidence relating to the life of
26 the victim and the impact of the loss of the victim to the
27 victim's family and society.

28 *b.* The defendant may present evidence that the defendant
29 was intellectually disabled or mentally ill at the time of the
30 commission of the offense. The burden of proof shall be on the
31 defendant to prove intellectual disability or mental illness by
32 a preponderance of the evidence.

33 *c.* The state or the defendant may present evidence relevant
34 to any mitigating circumstances which may exist. Mitigating
35 circumstances may include the following circumstances:

1 (1) The defendant was under the influence of an extreme
2 mental or emotional disturbance insufficient to constitute a
3 defense.

4 (2) The age of the defendant at the time of the offense.

5 (3) The defendant's capacity to appreciate the wrongfulness
6 of the defendant's conduct and to conform that conduct to the
7 requirements of law was significantly impaired as a result of a
8 mental disease or defect or intellectual disability, but not to
9 a degree sufficient to constitute a defense.

10 (4) The defendant has no significant history of prior adult
11 criminal activity.

12 (5) The defendant acted under extreme duress or under the
13 substantial domination of another person.

14 (6) The defendant did not directly commit the capital murder
15 offense and the defendant did not intend to kill or anticipate
16 that lethal force would be used.

17 (7) Any other factor which is relevant to the defendant's
18 character or record or to the circumstances of the offense.

19 *d.* The state and the defendant or the defendant's counsel
20 shall be permitted to present and cross-examine witnesses and
21 present arguments for or against a sentence of death. Evidence
22 regarding aggravating and mitigating circumstances shall not
23 be governed by the rules governing admissibility of evidence,
24 except that introduction of evidence secured in violation of
25 the Constitution of the United States or of the Constitution of
26 the State of Iowa shall not be permitted.

27 6. At the conclusion of presentation of evidence in
28 the penalty proceeding, the state and the defendant or the
29 defendant's counsel shall be permitted to make closing
30 arguments, including any rebuttal arguments, in the same manner
31 as in the initial proceeding and the following issues shall be
32 determined by the jury or by the court if there is no jury:

33 *a.* Whether the aggravating circumstance or circumstances
34 have been established beyond a reasonable doubt and outweigh
35 any one or more mitigating circumstances.

1 *b.* Whether the defendant shall be sentenced to death.

2 7. A recommendation for a sentence of death shall not be
3 permitted if the recommendation is based on the race, color,
4 religious beliefs, national origin, or sex of the defendant
5 or of any victim, or based on any other protected class under
6 chapter 216. After submission of the issues, but prior to the
7 return of a finding in the penalty proceeding, if the matter
8 is tried before a jury, the court shall instruct the jury
9 that in considering whether a sentence of death is justified,
10 the jury shall not consider race, color, religious beliefs,
11 national origin, or sex of the defendant or of any victim, or
12 consider any other protected class under chapter 216. The
13 court shall further instruct the jury that the jury shall not
14 return a sentence of death unless the jury concludes that such
15 a sentence would be recommended no matter what the race, color,
16 religious beliefs, national origin, sex, or other protected
17 class of the defendant or of any victim may be.

18 8. After submission of the issues, but prior to the
19 commencement of the jury deliberations in the penalty
20 proceeding, the court shall instruct the jury that if the
21 defendant is not sentenced to death, the court is required by
22 law to impose a sentence of imprisonment until death without
23 parole. The court shall further instruct the jury that
24 the sentence of imprisonment until death without parole is
25 required by law if the jury fails to reach a unanimous verdict
26 recommending a sentence of death.

27 9. Concurrently with the return of the findings on the
28 issues submitted under subsection 6, the jury, or the court if
29 there is no jury, shall return special verdicts as follows:

30 *a.* Which aggravating circumstances were established beyond a
31 reasonable doubt and were considered in reaching the verdict.

32 *b.* Which mitigating circumstances were established and
33 were considered in reaching the verdict returned on the issue
34 specified in subsection 6, paragraph "*a*".

35 10. If the jury, or the court if there is no jury, returns

1 a unanimous affirmative finding on each of the issues submitted
2 under subsection 6, paragraphs "a" and "b", the court shall
3 enter a judgment of conviction and shall sentence the defendant
4 to death as provided in section 902.1A.

5 11. However, if evidence that the defendant was not a
6 major participant in the commission of the capital murder
7 under section 902.15, and that the defendant's conduct did not
8 manifest a reckless indifference to human life is presented
9 to the jury, or to the court if there is no jury, the jury or
10 the court shall also return a special verdict on the issue.
11 If the jury unanimously determines, or the court if there is
12 no jury, determines that a preponderance of evidence exists
13 that shows that the defendant was not a major participant in
14 the commission of the capital murder under section 902.15,
15 and that the defendant's conduct did not manifest a reckless
16 indifference to human life, the court shall enter a judgment
17 of conviction and shall sentence the defendant to life
18 imprisonment as provided in section 902.1, even if the jury or
19 the court returns unanimous affirmative findings on each of the
20 issues submitted under subsection 6.

21 12. If the jury, or the court if there is no jury, returns
22 a negative finding on any of the issues submitted under
23 subsection 6, paragraph "a" or "b", the court shall enter a
24 judgment of conviction and shall sentence the defendant to life
25 imprisonment as provided in section 902.1.

26 13. After a verdict has been rendered it shall be recorded
27 on the jury verdict form and shall be read and recorded in open
28 court. The jurors shall be collectively asked by the court
29 whether the verdict returned is their true and correct verdict.
30 Even though no juror makes any declaration to the contrary, the
31 jury shall, if either party so requests, be polled and each
32 juror shall be separately asked whether the verdict rendered by
33 the jury foreperson is the juror's true and correct verdict.
34 If, upon either the collective or the separate inquiry, any
35 juror denies that the verdict is the juror's verdict, the court

1 shall refuse to accept the verdict. The court may direct
 2 inquiry or permit inquiry by counsel to ascertain whether any
 3 juror has been subjected to coercion or has become confused
 4 during the jury deliberation process. The court may, as
 5 appropriate, direct the jury to resume deliberation in the
 6 case. If no disagreement on the verdict is expressed by any of
 7 the jurors, the court shall discharge the jury.

8 Sec. 10. Section 902.1, subsection 1, Code 2021, is amended
 9 to read as follows:

10 1. ~~Upon~~ Except as provided in section 902.1A, a plea of
 11 guilty, a verdict of guilty, or a special verdict upon which a
 12 judgment of conviction of a class "A" felony may be rendered,
 13 the court shall enter a judgment of conviction and shall commit
 14 the defendant into the custody of the director of the Iowa
 15 department of corrections for the rest of the defendant's
 16 life. Nothing in the Iowa corrections code pertaining to
 17 deferred judgment, deferred sentence, suspended sentence, or
 18 reconsideration of sentence applies to a class "A" felony, and
 19 a person convicted of a class "A" felony shall not be released
 20 on parole unless the governor commutes the sentence to a term
 21 of years.

22 Sec. 11. NEW SECTION. 902.1A Capital murder — death
 23 penalty.

24 1. For the purposes of this section, "*lethal injection*"
 25 means a continuous intravenous injection of a lethal substance
 26 sufficient to cause death.

27 2. Notwithstanding section 902.1, upon return of a plea
 28 or verdict of guilty to capital murder under section 902.15,
 29 and a return of a verdict in favor of a sentence of death in
 30 a penalty proceeding conducted as provided in section 901E.1,
 31 the court shall enter a judgment of conviction and shall commit
 32 the defendant into the custody of the director of the Iowa
 33 department of corrections. The sentence shall be carried out
 34 by the administration of a lethal injection pursuant to rules
 35 adopted by the board of corrections. If a defendant, for whom

1 a warrant of execution is issued, is pregnant, the execution
 2 shall not take place until after the defendant is no longer
 3 pregnant. If a defendant, for whom a warrant of execution is
 4 issued, is suffering from such a diseased or deranged condition
 5 of the mind as to prevent the defendant from knowing the nature
 6 and quality of the act the defendant has been convicted of,
 7 or from understanding that trial on the offense has taken
 8 place and that execution proceedings are about to take place,
 9 or to otherwise cause the defendant to lack the capacity
 10 to understand the sentence which has been imposed and to
 11 participate in any legal proceedings relating to the sentence,
 12 the execution shall not take place until after the defendant's
 13 capacity is restored. If the director of the department of
 14 corrections or the defendant's counsel files a request with the
 15 court which issued the warrant of execution, alleging that the
 16 defendant suffers from such a diseased or deranged condition, a
 17 hearing on the matter shall be held in the manner provided in
 18 section 812A.1.

19 Sec. 12. NEW SECTION. 902.15 **Capital murder.**

20 1. As used in this section:

21 a. (1) "*Capital murder*" means any murder that makes a
 22 person eligible for the death penalty.

23 (2) A person is eligible for the death penalty when a person
 24 is convicted of murder in the first degree in violation of
 25 section 707.2.

26 b. "*Intellectually disabled*" means significant subaverage
 27 general intellectual functioning accompanied by significant
 28 deficits or impairments in adaptive functioning manifested in
 29 the developmental period, but no later than the age of eighteen
 30 years, and accompanied by deficits in adaptive behavior.

31 c. "*Mentally ill*" means the condition of a person who
 32 is suffering from a chronic and persistent serious mental
 33 disease or disorder and who, by reason of that condition, lacks
 34 sufficient judgment to make responsible decisions regarding
 35 treatment and is reasonably likely to injure the person's self

1 or others who may come into contact with the person if the
2 person is allowed to remain at liberty without treatment.

3 2. A person who commits capital murder, who is not
4 intellectually disabled or mentally ill, and who is age
5 eighteen or older at the time of the murder in the first
6 degree, shall be eligible for a sentence of death under section
7 902.1A.

8 Sec. 13. NEW SECTION. 902.16 Data collection for capital
9 murder — death penalty.

10 1. The supreme court shall collect data on all capital
11 murder charges in which the death penalty is or was not waived,
12 which are filed and processed in the courts in this state.
13 This data may be used by the supreme court to determine whether
14 death sentences imposed are excessive or disproportionate, or
15 under the influence of prejudice under section 814.28. The
16 court shall make this data available to litigants in death
17 penalty cases.

18 2. Data collected by public officials concerning factors
19 relevant to the imposition of the death sentence shall be made
20 publicly available.

21 Sec. 14. NEW SECTION. 903C.1 Executions — refusal to
22 perform.

23 An employee of the state who may lawfully perform, assist, or
24 participate in the execution of a person pursuant to section
25 902.1A, and rules adopted by the department of corrections,
26 shall not be required to perform, assist, or participate in
27 the execution. State employees who refuse to perform, assist,
28 or participate in the execution of a person shall not be
29 discriminated against in any way, including but not limited
30 to employment, promotion, advancement, transfer, licensing,
31 education, training, or the granting of any privileges or
32 appointments because of the refusal to perform, assist, or
33 participate in the execution.

34 Sec. 15. Section 904.105, Code 2021, is amended by adding
35 the following new subsection:

1 This bill amends the Iowa criminal code to provide for
 2 punishment by death for capital murder committed by a person
 3 age 18 or older if the trial jury, or the judge if there
 4 is no jury, makes specific findings and whether the jury
 5 believes the defendant should be put to death in a separate
 6 penalty proceeding held after the close of the initial trial
 7 proceeding. Under the bill, a death sentence could be imposed
 8 if the murder would constitute murder in the first degree.

9 The bill provides that in order to receive a sentence of
 10 death, the defendant must be at least 18 years of age at the
 11 time the murder in the first degree was committed, must not be
 12 mentally ill or intellectually disabled, and must have been a
 13 major participant in the commission of the crime or must have
 14 shown a manifest indifference to human life.

15 The bill amends Code section 707.2, murder in the first
 16 degree, to include when a person intentionally kills a peace
 17 officer, with knowledge that the person killed is a peace
 18 officer.

19 The bill specifies that the attorney general may prosecute
 20 all actions and proceedings involving capital murder, when
 21 in the attorney general's judgment the interest of the state
 22 requires the attorney general to intervene on behalf of the
 23 county attorney, or upon request by the county attorney.

24 If a person is indigent and is charged with capital murder,
 25 payment of costs for two attorneys is authorized. The supreme
 26 court is required to establish standards for the competency of
 27 counsel in death penalty cases. The state public defender is
 28 charged with establishing teams of qualified lead and cocounsel
 29 for death penalty cases, as well as conducting or sponsoring
 30 specialized training programs for attorneys representing
 31 persons who may be executed.

32 If a capital murder case proceeds to trial and a notice of
 33 intent to seek the death penalty has been filed, in addition to
 34 any other defenses which may be presented to the charge, the
 35 defendant may raise the issue of intellectual disability or

1 mental illness during the time of filing pretrial motions.

2 Once the evidence is submitted to the jury, the court
3 will instruct the jury, at the defendant's request, that in
4 considering whether a sentence of death is justified, the
5 race, color, religious beliefs, national origin, sex, or other
6 protected classes under Code chapter 216 of the defendant or
7 of any victim is not to be considered. The supreme court
8 shall collect evidence relating to whether the death sentences
9 imposed are excessive, disproportionate, or imposed under the
10 influence of prejudice at trial which will be available to
11 litigants.

12 The sentence of death is imposed only when the trier of fact
13 (the jury or the court if the defendant has waived the right to
14 a jury trial) unanimously answers two questions affirmatively:
15 (1) whether aggravating circumstances established beyond
16 a reasonable doubt outweigh any mitigating circumstances
17 that may exist; and (2) whether the defendant should be
18 sentenced to death. Mitigating factors the trier of fact may
19 consider include the following: the defendant was under the
20 influence of an extreme mental or emotional disturbance; the
21 age of the defendant; the defendant's ability to appreciate
22 the wrongfulness of the conduct due to mental disease but
23 not to a degree to constitute a defense; the defendant has
24 no significant prior criminal history; the defendant was
25 under extreme duress; the defendant did not directly commit
26 the murder; and the defendant's character or record or the
27 circumstances of the offense. The sentencing proceeding is
28 conducted separately from the finding of guilt or innocence by
29 the same trier of fact.

30 For the sentencing proceeding, the trier of fact (the jury
31 or the court if the defendant has waived the right to have
32 the jury hear the proceedings) is to weigh any aggravating
33 circumstances established beyond a reasonable doubt by the
34 state against any of the enumerated mitigating circumstances
35 which may be presented by the defendant. Evidence of certain

1 juvenile delinquency adjudications is not admissible in any
2 proceeding to determine the sentence. If the jury fails to
3 agree unanimously on the required affirmative findings, the
4 penalty imposed would be life imprisonment.

5 The death penalty sentence would be reviewed automatically
6 by the supreme court. The supreme court shall review the trial
7 and judgment separately from the sentencing proceeding. If the
8 supreme court finds error in the sentencing proceeding, the
9 supreme court may remand the case back to district court for a
10 new sentencing hearing. The bill requires the supreme court to
11 examine whether the sentence is excessive or disproportionate
12 to penalties in similar cases. If affirmed by the supreme
13 court, the penalty would be accomplished by lethal injection.
14 The bill requires the board of corrections to adopt rules
15 pertaining to executions, including rules pertaining to the
16 witnessing of executions.

17 A person who is sentenced to death, but who is pregnant when
18 the warrant of execution is issued, is not to be executed until
19 the person is no longer pregnant. A procedure is also provided
20 to stay execution of a condemned inmate who becomes insane
21 after conviction but before execution.

22 An employee of the state shall not be required to perform or
23 assist in any execution and shall not be discriminated against
24 for refusing to participate.

25 The bill may include a state mandate as defined in Code
26 section 25B.3. The bill makes inapplicable Code section 25B.2,
27 subsection 3, which would relieve a political subdivision from
28 complying with a state mandate if funding for the cost of
29 the state mandate is not provided or specified. Therefore,
30 political subdivisions are required to comply with any state
31 mandate included in the bill.

32 The bill contains severability provisions and takes effect
33 January 1, 2022, and applies only to offenses committed on or
34 after that date.